LIBRARY
SUPREME COURT, U. S.
APR 1
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 954

WILLIS SMITH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOSEPH A. ST. ANA
Counsel for Petitioner
920 duPont Building
Miami 32, Florida

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES AND RULE INVOLVED	iv
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	5

AUTHORITIES

CASES

Banning et al. v. United States, CCA 6th 1942, 130 F2d 330

Billeci v. United States and Lewis v. United States, CADC 1950, 184 F2d 394

Blodgett v. United States, CCA 8th 1947, 161 F2d 47

Byars v. United States, 273 U.S. 28, 47 S. Ct. 428, 71 L.Ed. 520

Dillingham v. United States, CCA 5th, 76 F2d 36

Dufree v. Jones, 11 R.I. 588, 23 Am. Rep. 528 (1877)

Egan v. United States, CADC 1923, 287 F. 958

Kaufman v. United States, CCA 6th 1947, 163 F2d 404

Kotteakos v. United States, 328 U.S. 750, 66 S. Ct. 1239, 90 L.Ed. 1557

Lowrey v. United States, CA 8th, 128 F2d 477

Lustig v. United States, (1949), 338 U.S. 74, 69 S. Ct. 1372, 93 L.Ed. 1819

Moore v. United States, CCA 5th 1947, 161 F2d 932

Pierriero v. United States, CCA 4th 1921, 271 F. 912

Schmeller v. United States, CCA 6th, 143 F2d 544

Strickland v. United States, CCA 5th, 155 F2d 167

United States v. Antonelli Fireworks Co., Inc., et al., CCA 2d, 155 F2d 631

United States v. Asendio, CA 3rd 1948, 171 F2d 122

United States v. Atkinson, 297 U. S. 157, 56 S. Ct. 392, 80 L.Ed. 955

United States v. Butler, CA 10th, 156 F2d 897

United States v. Di Re, (1948), 332 U S. 581, 68 S. Ct. 222

United States v. Dixon, D.C. Cal. 1949, 117 F. Supp. 925

United States v. Irwin, D.C. Ark. 1949, 86 F. Supp 362

United States v. Levi, CA 7th 1949, 177 F2d 833

United States v. One 1948 Cadillac Convertible Coupe, D.C. N.J., 1953, 115 F. Supp. 723

United States v. Plymouth Coupe (1941) etc., C.A. 3rd 1950, 182 F2d 180

Virginian Ry. Co. v. Armentrout, CCA 4th, 166 F2d 400

Ward v. United States, CA 5th, 96 F2d 189

Weeks v. United States, 232 U.S. 383, 34 S. Ct. 341, 58 L.Ed. 652

Williams, et al., v. United States, CCA 9th 1937, 93 F2d 685

FEDERAL STATUTES

Harrison Narcotics Act of 1954, 26 U.S.C.A. 4744

STATE STATUTES

Florida Statutes, Chapter 398

Florida Statutes, Section 398.03

Florida Statutes, Section 398.21

RULES OF COURT

Federal Rule of Criminal Procedure 52 (b)

TEXTS

Blacks, Law Dictionary, Third Edition, p. 1382

Blacks, Law Dictionary, Third Edition, p. 1383

Brown on Personal Property, 1936 Ed., p. 21

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. _____

WILLIS SMITH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Willis Smith, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this cause.

OPINIONS BELOW

There was no opinion in the District Court. The

opinion of the Court of Appeals before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges, has not been reported. A copy is appended as Appendix I. There was no opinion on denial of rehearing.

JURISDICTION

The judgment of the Court of Appeals was entered February 13, 1958. A petition for rehearing made by this petitioner was duly entertained and denied on March 27, 1958. Proceedings toward the surrender of the petitioner have been stayed until decision by this Court.

Jurisdiction to issue the writ rests on Title 28, United States Code Annotated, § 1254 (1).

QUESTIONS PRESENTED

I. Did the Court of Appeals fail to consider appellant counsel's uncontroverted oral supplementation of the transcript from the court below.

II. Did the Court of Appeals rightly refuse to recognize that the jury was present in the courtroom jury-box during the time the lower court judge made remarks and comments prejudicial to the defendant (appellant).

III. Did the Court of Appeals fail to give due recognition to Federal or State laws of search and seizure as cited by appellant to that court.

IV. Did the Court of Appeals refuse to recognize or give proper credence to appellant's argument and cita-

tions of law regarding judicial notice of errors and the applicable Federal Rule.

V. Did the Court of Appeals err in accepting as complete and correct the lower court's definition of "possession" under the Federal Statute known as the **Harrison Narcotics Act.**

VI. Did the Court of Appeals err in refusing to grant rehearing after proper notice of appellant counsel's efforts to formally correct the trial transcript by showing presence of jury during prejudicial remarks of the lower court judge.

STATEMENT OF THE CASE

The judgment of the Court of Appeals sought to be reviewed, affirms a judgment convicting the petitioner of violating **The Harrison Narcotics Act,** Title 26, U.S.C.A., Sec. 4744 (a).

The defendant, appellant here, was seen standing beside his automobile which was occupied by two other men. The automobile was later found to contain marijuana and the same two men. Defendant was arrested and charged with possession. The two men were not. They were used as government witnesses. Certain argument between defense counsel and the court ensued at the opening of the trial in the presence of the jury. The reporter, though reporting this argument, failed to note that the jury was in the box duly selected and waiting to be sworn. Defendant was found guilty by this jury.

REASONS FOR ALLOWANCE OF THE WRIT

The Court of Appeals for the Fifth Circuit so far sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

The Court of Appeals for the Fifth Circuit failed or refused to recognize their judicial duty to correct obvious error in the record.

The Court of Appeals for the Fifth Circuit misconstrued the law as cited by appellant to a point requiring supervision and review by this court.

Wherefore, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals for the Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the proceedings of that court herein, being the case numbered and entitled in its docket as "Willis Smith, Appellant, vs. United States of America, Appellee", and that the judgment of that Court be reviewed by this Court, and for such other relief as to this Court may seem proper.

Dated, April 22, 1958.

WILLIS SMITH,
Petitioner

By: _____
JOSEPH A. ST. ANA
920 duPont Building
Miami 32, Florida
Attorney for Petitioner

PROOF OF SERVICE

I, Joseph A. St. Ana, as attorney for Willis Smith, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 25th day of April, 1958, I served copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on the United States, by leaving a copy thereof at the office of C. B. Cline, Esq., Assistant United States Attorney for the Southern District of Florida, Miami Division, at Room 234, Federal Building, Miami, Florida, and by mailing a copy, in a duly addressed envelope, with air mail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C.

JOSEPH A. ST. ANA
Attorney for Petitioner
920 duPont Building
Miami 32, Florida

Subscribed and sworn to before me, at Miami, Florida, this 25th day of April, 1958.

Notary Public, State of Florida
at Large